



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
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May 7, 2018

**Via ECF**

The Honorable Alison J. Nathan  
United States District Court  
40 Foley Square  
New York, New York 10007

**Re: *SEC v. Bergstein*, 16-cv-8701 (S.D.N.Y.) (AJN)**

Dear Judge Nathan:

Plaintiff Securities and Exchange Commission (the "Commission") respectfully writes to advise Your Honor of the disposition of the parallel criminal action against Defendant David Bergstein. On November 9, 2016, the day the Commission filed its complaint in this action, the U.S. Attorney's Office ("USAO") unsealed a seven-count indictment against Mr. Bergstein and a co-defendant, Keith Wellner, alleging the same facts, circumstances, and conduct alleged in this action. (*See* DE # 1-2, *United States v. Bergstein*, 16-cr-746 (PKC).)

On December 1, 2016, the USAO moved to intervene in this action and stay it in its entirety pending the conclusion of the criminal action. Defendant Bergstein consented to the USAO's motion and the Commission took no position. (DE # 9 at 1.) On December 2, 2016, Your Honor issued an order granting the USAO's motion for a complete stay "pending completion of the parallel criminal case." (DE # 13.)

On March 1, 2018, after a 17-day trial before the Honorable Kevin P. Castel, Bergstein was convicted on all counts and remanded into custody. (*See* DE # 305, *United States v. Bergstein*, 16-cr-746 (PKC).) He is scheduled to be sentenced on June 12, 2018. (DE # 380, *United States v. Bergstein*, 16-cr-746 (PKC).)

The Commission has, since the date of Bergstein's conviction, discussed with his counsel a potential settlement of this action. The Commission has not, however, been able to reach an agreement with Bergstein on the terms of an acceptable settlement. Accordingly, the Commission respectfully requests that Your Honor lift the stay in this action, either before or after his sentencing, so that Bergstein may answer or otherwise respond to the complaint.

The Honorable J. Alison

May 7, 2018

Page 2

I have conferred with AUSA Edward Imperatore, who advised me that the USAO has no objection to the stay being lifted in this action.

Respectfully submitted,

s/ John O. Enright

John O. Enright

Senior Counsel

cc: AUSA Edward Imperatore